

Claim Rejections - 35 USC § 101

6. **Claims 69 - 81** stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Examiner states as follows:

The claims improperly include a portion of a living being ("surface of a tissue over a big vein associated with an underside of the patient's tongue") as part of the claimed subject matter. It appears that the phrase "are proximate or in contact with" should read "are adapted to be proximate or in contact with" to avoid positively claiming the connection with the living being.

Applicants thank the Examiner for his suggestions and have modified the claims accordingly. It was not the intent of the Applicants to claim the patient tongue as an element of the claim, but to ensure that the method was direct at viewing the blood in vessels located on the underside of a patient's tongue. Because Applicants have made the suggested correction, Applicants respectfully request withdrawal of these 101 rejection

Claim Rejections - 35 USC § 102

8. **Claims 45 - 67** stand rejected under 35 U.S.C. 102(b) as being anticipated by Hatschek.

The Examiner states as follows:

Hatschek teaches an optical measurement system (Figure 4; column 6 - 8) suitable for determination of oxygen saturation from the underside of a subject's tongue (column 11, lines 41 - 64). It is inherent that at least some of the measurement light would irradiate a big vein of the subject's tongue and that the detecting step would be performed in the presence of a static (earth's) magnetic field.

Hatschek is directed to measuring oxygenation of blood through oxyhemoglobin or the ratio of oxyhemoglobin to total hemoglobin as is true for the present invention. However the method is substantially different. Hatschek is directed at measuring blood in the capillaries in the dermis near the epidermal boundary. Hatschek also uses heating to improve oxygenation measurement, where heating is affected by ultrasound, while measurements are made optically.

Clearly, the optical regions are similar as they represent the hemoglobin absorption regions of the electromagnetic spectrum. However, the present invention does not look at the dermis, but looks directly into a large vessel on the underside of the tongue. No heating is needed at the probe is positioned directly on the exterior of the large vessels so that the data obtained is from blood in the vessel and not blood in a dermal layer where blood flow may be variable.

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Because Hatschek nor a combination of Hatschek and Takeuchi et al. disclose, teach or even suggest the apparatus of claims 68, Hatschek nor a combination of Hatschek and Takeuchi et al. cannot render the present invention obvious.

Applicants are submitting herewith a supplemental IDS, for the Examiner's consideration.

Conclusion

The Examiner states as follows:

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nielsen teach that an oximeter arrangement, such as that of Hatschek, can obtain measurements of carboxyhemoglobin by including an additional wavelength sensitive to carboxyhemoglobin in the measurement arrangement. Hoeft teaches a measurement arrangement for measuring oxygen saturation and cardiac output with use of indicator dyes such as indocyanine green. Stavridi et al. teach an optical glucose measurement device that can perform measurements from the base of a subject's tongue. Caro teaches optical measurement of analytes, including cholesterol, wherein measurements may be obtained from a subject's tongue. The prior art does not teach or suggest a measurement arrangement including a middle section interposed between two transition sections extending downwardly from each of two side sections, the middle section adapted to be proximate to or in contact with an underside of a patient's tongue that includes an emitter and receiver, in combination with the other claimed elements, for determining a concentration of a blood component and/or value of a parameter of the blood.

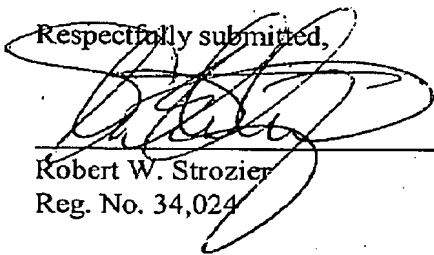
Applicants acknowledge these statements.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000.

The Commissioner is authorized to credit or debit deposit account number 501518 if required for this response.

Date: September 27, 2007

Respectfully submitted,


Robert W. Strozier
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